

## **G.S. 36C-4-415**

### **SUPPLEMENTAL NORTH CAROLINA COMMENT (2017)**

Effective for actions to reform trusts filed on or after January 1, 2018, this section is amended to delete the words “even if unambiguous” and substitute in place of them the words “if the terms of the trust are ambiguous” appearing after the words “the terms of a trust” in the first line of the section. This amendment represents a significant change in North Carolina law provided by this section which, prior to this amendment, was based on Section 415 of the Uniform Trust Code allowing the admission of extrinsic evidence to prove the settlor’s intent with respect to a mistake even if the terms of the trust were unambiguous. The drafters of the amendment were concerned that this rule would provide grounds for attempts to contradict or vary the plain meaning of the terms of a trust contrary to the settlor’s intention despite the requirement that evidence be “clear and convincing.”

Under this section, as amended, the court may consider extrinsic evidence relevant to the settlor’s intention with respect to mistakes only if the terms of the trust are ambiguous. The statements in the Official Comment to this section to the effect that the court may consider extrinsic evidence with respect to the settlor’s intent even though it contradicts the apparent plain meaning of the text should be disregarded. For provisions authorizing a court to reform the terms of a will to correct a mistake which are consistent with the provisions of this section, as amended, with regard to a trust, see G.S. 31-61.

In addition to this change, the first sentence of this section was amended to make minor clarifying changes, and the second sentence of this section stating that G.S. 36C-2-203 will govern jurisdiction of a proceeding brought under this section was deleted as unnecessary because Article 2 of this Chapter was already applicable to this section.